

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Auction Reform Act of 2002 )  
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 )

**REPORT TO CONGRESS**

**Adopted:** June 19, 2003

**Released:** June 19, 2003

By the Commission:

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## I. INTRODUCTION AND EXECUTIVE SUMMARY

1. This report is in response to Section 2(a) of the Auction Reform Act of 2002.<sup>1</sup> This legislation, which was enacted one year ago, eliminated statutory deadlines relating to auctions for licenses in various spectrum bands and confirmed the Commission’s broad authority to determine the timing of the conduct of competitive bidding “notwithstanding any other provision of law.”<sup>2</sup> The Auction Reform Act also added a new Section 309(j)(15) to the Communications Act of 1934.<sup>3</sup> In particular, new Section 309(j)(15)(C)(iv) provides:

(iv) REPORT - Within one year after the date of enactment of this paragraph, the Commission shall submit a report to Congress--

(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i) [the 710-720 MHz and 716-722 MHz band segments]); and

(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.<sup>4</sup>

2. The Commission intends to reschedule the 700 MHz auctions pursuant to its broad discretion under Section 309(j)(15)(A) upon or near the completion of pending proceedings concerning Advanced Wireless Services (the “AWS initiative,” also known as, the “3G proceeding”)<sup>5</sup> and the transition of existing analog television broadcasting systems to more spectrally-efficient, digital television (“DTV”) systems (more commonly known as, the “DTV transition”).

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<sup>1</sup> Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (“Auction Reform Act”); 47 U.S.C. § 309(j)(15)(C)(iv). Appendix A of this report is the complete text of the Auction Reform Act.

<sup>2</sup> 47 U.S.C. § 309(j)(15)(A), as added by the Auction Reform Act.

<sup>3</sup> 47 U.S.C. § 309(j)(15)(C)(iv); Auction Reform Act, § 2.

<sup>4</sup> *Id.*

<sup>5</sup> The AWS initiative is commonly referred to as the “3G proceeding” because the spectrum that is the subject of that initiative is intended to provide advanced wireless services (“AWS”), which includes services commonly referred to as “Third Generation” or “IMT-2000.” Advanced wireless systems will use ongoing technological advances to provide a wide range of voice, data and broadband services over a variety of mobile and fixed networks, with enhanced interoperability and roaming features.

3. This report begins by providing background on how the management of the 700 MHz spectrum was shaped by legislation and Commission decisions. The background section also gives an overview of the spectrum recovery component of the DTV transition, and discusses the 700 MHz auction schedules that formed the backdrop for the passage of the Auction Reform Act. Next, we discuss the considerations that will be taken into account in our upcoming decisions to reschedule the remaining 700 MHz auctions. In particular, we conclude that:

- significant progress has been made in finalizing the regulatory issues that Congress identified in the Auction Reform Act; and
- we expect to render decisions on the remaining issues in the AWS and DTV proceedings in the near future.

Absent changes in our existing statutory authority, as we discuss below, we do not believe the 800 MHz proceeding should implicate the timing of the 700 MHz auctions because substantial steps in that proceeding will be taken well before any auction date, and certainly within the next several months. Barring unexpected circumstances, we anticipate announcing new 700 MHz auction schedules near or upon completion of the AWS and DTV proceedings.

4. The report describes progress in the DTV, AWS, and 800 MHz public safety interference proceedings to address the Congressional concerns at the time of the passage of the Auction Reform Act as expressed in the legislative findings. The report describes the following developments:

- **DTV Transition:** The last of the DTV construction deadlines in the Commission's rules passed on May 1, 2003, so all broadcasters are now required to have completed construction of DTV stations.<sup>6</sup> Accordingly, most DTV stations are now on the air broadcasting digital television. The Commission has taken an aggressive role in advancing the DTV proceeding by encouraging commitments from various interested industries, and through its proceedings on digital must carry, DTV tuners, digital copy protection, digital cable compatibility, and the *DTV Periodic Review* rulemakings. We have also made progress in implementing Congress's directives to reclaim and organize the 700 MHz band spectrum that is to be vacated by broadcasters as part of the DTV transition, and are actively making that spectrum accessible for public safety, homeland security, and other new wireless services on a non-interference basis.
- **AWS Initiative:** The Commission has, in coordination with the National Telecommunications and Information Administration ("NTIA"), taken a number of substantial steps to free up spectrum that can be used to provide advanced wireless services ("AWS"), including 3G services. Over the past year, the Commission has allocated 90 megahertz of spectrum for AWS, and will soon finalize service rules for this spectrum. In addition, NTIA, in conjunction with the Commission, the Department of Defense, and other Federal Government agencies, completed the study of the viability of possible spectrum sharing that was pending when the Auction Reform Act was enacted.
- **Other Concerns and Considerations:** The report also describes developments in areas

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<sup>6</sup> As the report discusses in detail, while significant numbers of broadcasters have sought extensions of time to complete construction of their DTV facilities, the Commission has established a sanction process designed to bring such broadcasters into compliance with construction requirements.

other than the DTV and AWS proceedings that were cited in the legislative findings of the Auction Reform Act, including telecommunications markets, the 800 MHz public safety interference proceeding, and Congressional concerns of unjust enrichment to incumbent television broadcast licensees.

As with all other auctions, we remain mindful that Congress has directed us to employ competitive bidding to promote specific public interest objectives.<sup>7</sup> We will take all relevant public interest considerations into account when making our scheduling decisions. Possible expiration of the Commission's competitive bidding authority is another issue that must be considered in any scheduling decision. Currently, the Commission's auction authority is set to sunset on September 30, 2007.<sup>8</sup> Finally, the report concludes by observing that significant benefits for the American people can be achieved by continuing to move forward with the DTV and AWS initiatives.

## II. BACKGROUND

5. Competitive bidding is one of the principal means by which the Federal Communications Commission assigns licenses for the use of the spectrum resource.<sup>9</sup> While the Auction Reform Act

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<sup>7</sup> Under Section 309(j)(3) of the Communications Act, in developing a competitive bidding methodology and specifying the characteristics of licenses to be assigned by auction, the Commission is required to promote a number of objectives, including:

- (A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;
- (B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;
- (C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource;
- (D) efficient and intensive use of the electromagnetic spectrum; ...

47 U.S.C. §309(j)(3)(A) - (D).

<sup>8</sup> See 47 U.S.C. § 309(j)(11).

<sup>9</sup> Certain type of licenses are exempt from the Commission's competitive bidding authority, such as licenses for public safety radio services and certain types of broadcast stations. See 47 U.S.C. § 309(j)(2) (exemptions from competitive bidding authority). In addition, Section 309(j) directs the Commission to use auctions to resolve "mutually exclusive applications [that] are accepted for any initial license or construction permit." 47 U.S.C. § 309(j)(1). Also, Section 647 of the Open-Market Reorganization for the Betterment of International Telecommunications Act limits the Commission's competitive bidding authority with respect to spectrum "used for the provision of international or global satellite communications services." Pub. L. No. 106-180, 114 Stat. 48 (2000). The Commission retains the discretion to employ licensing procedures in a particular service that minimize the likelihood of mutually exclusive applications, if warranted by public interest considerations, including the specific characteristics, uses, and demands of a given service. See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; Petition for Rule Making of the American Mobile Telecommunications (continued....)

generally affirmed the Commission's discretion over the scheduling and timing of spectrum auctions, this legislation eliminated certain statutory deadlines that had previously applied to specific spectrum bands, including the 700 MHz bands. The Auction Reform Act also directed the Commission not to commence or conduct auctions for Upper and Lower 700 MHz band licenses on June 19, 2002.<sup>10</sup> Those 700 MHz band auctions are part of the on-going DTV transition process.

#### A. 700 MHz Spectrum Recovery Process

6. The recovery of spectrum from existing, analog broadcast uses is a key component of the DTV transition process.<sup>11</sup> Because the digital television transmission system is more spectrally efficient than the analog system, less spectrum will be needed for broadcast television service after the transition. Congress recognized the beneficial result of the spectrum recovery component of the DTV transition in 1997 when it added Section 337 to the Communications Act requiring the Commission to reallocate 24 megahertz of the Upper 700 MHz band<sup>12</sup> for public safety services and the remaining 36 megahertz of spectrum in that band for "commercial use to be assigned by competitive bidding."<sup>13</sup> Congress also recognized that additional spectrum beyond the Upper 700 MHz band would be recovered from analog broadcasters, and directed the Commission to "reclaim and organize" such spectrum "in a manner consistent with the objectives" of the Commission's Section 309(j)(3) competitive bidding authority.<sup>14</sup> While Congress did not specify the amount of spectrum to be reclaimed beyond the Upper 700 MHz Band, the Commission determined that all broadcasters could operate with digital transmission systems in Channels 2-51 after the transition, thus allowing Channels 52-59 to be reclaimed for new services.<sup>15</sup> Accordingly, pursuant to the statutory directives contained in Sections 337 and 309(j)(14)(C), the Commission has identified a total of 108 megahertz of spectrum in the Upper and Lower 700 MHz bands to be recovered for public safety and other new wireless uses.

7. The statutory scheme contemplates that public safety entities and other new wireless entities would be licensed prior to the end of the DTV transition period, which is currently scheduled to end on December 31, 2006 but may be extended in individual television markets if any of one of the three conditions for an extension identified in Section 309(j)(14)(B) exist in that market.<sup>16</sup> This approach, the

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Association, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 22709 (1999) (establishing framework for exercise of auction authority).

<sup>10</sup> 47 U.S.C. § 309(j)(15) (B).

<sup>11</sup> See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968, 10977 ¶ 18 (1996).

<sup>12</sup> The "Upper 700 MHz band," which is currently used by TV operations on Channels 60-69, comprises the 60 megahertz of spectrum at 746-806 MHz. The "Lower 700 MHz band" (Channels 52-59) is the 48 megahertz at 698-746 MHz.

<sup>13</sup> See 47 U.S.C. § 337(a) (enacted by the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3004 (adding new Section 337(a) and establishing initial timetable for conducting auctions)).

<sup>14</sup> See 47 U.S.C. § 309(j)(14)(C).

<sup>15</sup> See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order of the Sixth Report and Order*, 13 FCC Rcd 7418, 7435-36 ¶ 42 (1998).

<sup>16</sup> See 47 U.S.C. § 309(j)(14)(B) (conditions for extension of analog TV licenses). The Commission is currently engaged in a rule making proceeding that is considering, among other things, how we should interpret (continued....)

Commission has previously found, is intended to ensure that the spectrum resource may be used efficiently and intensively during the DTV transition for the benefit of the American public while minimizing disruption to over-the-air broadcasting on these channels.<sup>17</sup> Section 309(j)(14) of the Communications Act requires the Commission to assign spectrum recovered from broadcast television using competitive bidding.<sup>18</sup>

## B. Previous 700 MHz Auctions Schedules

8. Prior to passage of the Auction Reform Act, Auction No. 31 – the auction for licenses of commercial spectrum<sup>19</sup> in the Upper 700 bands (TV channels 60-69) – had been delayed several times. A statutory deadline required that the proceeds from this auction be deposited in the Treasury by September 30, 2000.<sup>20</sup> Auction No. 44, involving the Lower 700 MHz bands (TV channels 52-59), was also subject to a separate statutory provision requiring auction receipts be deposited by September 30, 2002.<sup>21</sup> Both auctions were slated to begin on June 19, 2002. On May 24, 2002, the Commission rejected requests to further delay Auction 44,<sup>22</sup> but provided for a short delay for Auction 31 (until January 14, 2003), “in order to provide additional time for Congress to consider legislation affecting the timing of that auction and, accordingly, bidder preparation and planning.”<sup>23</sup>

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certain portions of Section 309(j)(14)(B). See Second Periodic Review of the Commission’s Rules and Policies Affecting the Transition to Digital Television, *Notice of Proposed Rulemaking*, 18 FCC Rcd 1279, 1303-14 ¶¶ 69-94 (2003) (“*DTV Second Periodic Review NPRM*”).

<sup>17</sup> See, e.g., Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules; Carriage of the Transmissions of Digital Broadcast Stations; Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845, 20865-66 ¶¶ 50-55 (2000).

<sup>18</sup> 47 U.S.C. § 309(j)(14)(C).

<sup>19</sup> Pursuant to a statutory directive in Section 337(a) of the Communications Act, the Commission has reallocated 24 megahertz of spectrum in the Upper 700 MHz band from current television uses to public safety services, and the remaining 36 megahertz for “commercial use to be assigned by competitive bidding pursuant to Section 309(j).” 47 U.S.C. § 337(a).

<sup>20</sup> See Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213.

<sup>21</sup> See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 §§ 3003 (adding new Section 309(j)(14) to the Communications Act, and establishing a deadline for broadcasters to cease 700 MHz operations); § 3004 (adding new Section 337(a) and establishing initial timetable for conducting auctions); § 3007 (un codified, reproduced at 47 U.S.C. § 309(j) note 3 (setting September 30, 2002 deadline for completion of certain auctions and deposit of proceeds).

<sup>22</sup> See Auction of Licenses in the 747-762 and 777-792 MHz Bands (Auction No. 31), Auction of Licenses in the 698-746 MHz Band (Auction No. 44), *Order*, 17 FCC Rcd 10098 (2002).

<sup>23</sup> “Auction of Licenses in the 747-762 and 777-792 MHz Band (Auction No. 31) Postponed Until January 14, 2003; Auction of Licenses in the 698-746 MHz Band (Auction No. 44) Will Proceed As Scheduled,” *Public Notice*, FCC 02-158, Report No. AUC-02-31-F (Auction No. 31) and AUC-02-44-D (Auction No. 44) (rel. May 24, 2002). While that Public Notice stated that the Commission intended to memorialize its views supporting that decision in a separate opinion, we find that it is no longer necessary to do so in light of intervening events.

### C. Auction Reform Act

9. On June 19, 2002, the Auction Reform Act was signed into law, postponing the scheduled auctions and eliminating the statutory deadlines that had been much of the impetus for the 700 MHz auction schedules. Congress recognized that questions had arisen about whether such statutory auction deadlines were “consistent with sound telecommunications policy and spectrum management principles.”<sup>24</sup> Further, the Auction Reform Act confirmed the Commission’s discretion to “determine the timing of and deadlines for the conduct of competitive bidding under [Section 309(j) of the Communications Act of 1934, as amended], including the timing of, and deadlines for, qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.”<sup>25</sup>

10. This legislation also directed the Commission to delay the auction of the A, B, and E blocks of the Lower 700 MHz band and to proceed with an auction of the C and D blocks starting “no earlier than August 19, 2002, and no later than September 19, 2002.”<sup>26</sup> The Auction Reform Act also limited the pool of eligible bidders for Auction No. 44 to those entities that the Bureau had previously identified as qualified bidders among those that had filed short form applications by the original May 8, 2002 deadline.<sup>27</sup> As is discussed below, Auction No. 44 started on August 27, 2002 and closed on September 18, 2002.<sup>28</sup>

11. In its findings supporting this legislation, Congress expressed several particular concerns. Among those concerns were plans for the identification, allocation, and assignment of spectrum for AWS (3G) systems; issues of interference in the 800 MHz band, especially as they may affect public safety wireless uses; uncertainties arising out of the continued encumbrance of the 700 MHz bands by analog and digital television stations; and the Commission’s policy regarding voluntary clearing of the 700 MHz bands.<sup>29</sup> Accordingly, the Auction Reform Act also requires the Commission to submit a report to Congress by June 19, 2003 “specifying when the Commission intends to reschedule auctions” for the remaining 700 MHz bands “and describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.”<sup>30</sup> The status of these matters is discussed below. The organization of this report parallels the legislative findings of the Auction Reform Act.

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<sup>24</sup> Auction Reform Act, at § 2.

<sup>25</sup> 47 U.S.C. § 309(j)(15), as added by the Auction Reform Act.

<sup>26</sup> 47 U.S.C. § 309(j)(15)(C)(iii), as enacted by the Auction Reform Act. The Auction Reform Act also directed the Commission to delay its then-scheduled auction of certain licenses in the Upper 700 MHz band (Auction No. 31).

<sup>27</sup> 47 U.S.C. § 309(j)(15)(C)(ii).

<sup>28</sup> Complete information concerning Auction No. 44 and all other Commission auctions, including individual round results and auction outcomes, may be found on the Commission’s web site at: <http://wireless.fcc.gov/auctions/>.

<sup>29</sup> Auction Reform Act, § 2 (findings).

<sup>30</sup> *Id.*

### III. DISCUSSION

#### A. 700 MHz Auction Schedule

12. The Commission intends to reschedule the 700 MHz auctions pursuant to its broad discretion under Section 309(j)(15)(A) upon or near the completion of the pending AWS and DTV proceedings.<sup>31</sup> As is discussed more fully below, the Commission, along with its counterparts at the U.S. Department of Commerce's National Telecommunications and Information Administration ("NTIA"),<sup>32</sup> has made progress over the past year in completing many aspects of this work.

13. The Auction Reform Act's findings cite lack of finality as to 3G allocation plans and the possibility of making the 700 MHz band available for such use as a basis for delaying 700 MHz auctions.<sup>33</sup> As is discussed more fully below, the Commission has made most of the allocation decisions necessary to allow the development of AWS systems and services. While a few allocation issues remain pending,<sup>34</sup> such decisions are not expected to have a significant effect on the 700 MHz bands or bidder planning and preparation for the 700 MHz auctions. We anticipate adopting service rules for the initial 90 megahertz of spectrum that we have allocated for AWS uses in the coming months.<sup>35</sup>

14. Currently, the Commission is examining a number of issues as part of its *DTV Second Periodic Review* proceeding.<sup>36</sup> This proceeding is considering a number of issues that affect the pace of the DTV transition as well as the ability of public safety entities and other new users to access the 700 MHz spectrum. Among other things, the *DTV Second Periodic NPRM* sought comment on deadlines for maximization/replication; our tentative conclusion that Sections 90.545(c) and 27.60(b) be amended to make clear that the interference protection specified in those provisions should be afforded to authorized and/or applied for NTSC and DTV facilities; interpretation of the deadline in section 309(j)(14) by which television broadcasters must cease analog television service; and any data or views that might be considered in the report to Congress required by the Auction Reform Act. As is discussed below, wireless interests, such as winners of Auction No. 44 (Lower 700 MHz band), have recently submitted comments in the *DTV Second Periodic Review* proceeding generally seeking strict interpretation of Section 309(j)(14) TV license extension provisions and opposing other outcomes that would lengthen the DTV transition period. Broadcast interests, on the other hand, advocate that they be given additional time

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<sup>31</sup> As noted above, the Auction Reform Act requires that this auction be completed before the Commission's competitive bidding authority expires. Currently, the Commission's auction authority is set to sunset on September 30, 2007. See 47 U.S.C. § 309(j)(11).

<sup>32</sup> NTIA is the the Executive Branch's principal voice on domestic and international telecommunications and information technology issues, and is responsible for administering the Federal Government's use of spectrum.

<sup>33</sup> Auction Reform Act, § 2 (findings).

<sup>34</sup> See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003) ("AWS Third NPRM").

<sup>35</sup> Services Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Notice of Proposed Rulemaking*, 17 FCC Rcd 24135 (2002) ("AWS Service Rules Notice").

<sup>36</sup> See *DTV Second Periodic Review NPRM*, 18 FCC Rcd 1279.

to complete their transitions to DTV and vacate the 700 MHz bands.

15. Although some commenters in the 800 MHz public safety interference proceeding have suggested the possibility of using some 700 MHz spectrum to address public safety interference issues, any such proposal would be difficult to implement because legislation would likely be required to amend the 24 megahertz/36 megahertz public safety/commercial split required by Section 337 of the Communications Act.<sup>37</sup> Pursuant to our existing statutory authority, we do not believe the 800 MHz proceeding should implicate the timing of the 700 MHz auctions because substantial steps in that proceeding will be taken well before any auction date, and certainly within the next several months.

## **B. Progress on Matters Identified in Auction Reform Act**

16. The Auction Reform Act also calls upon the Commission to describe “the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.”<sup>38</sup> This section of the report describes the progress made over the past year in the DTV transition and 3G proceeding, as well as the status of the other areas that were of concern to Congress one year ago.

### **1. Progress of DTV Transition**

17. One significant concern underlying the Auction Reform Act involves the DTV transition and its spectrum recovery effort. The Auction Reform Act’s fifth legislative finding states:

*The 700 megahertz band is currently occupied by television broadcasters, and will be so until the transfer to digital television is completed. This situation creates a tremendous amount of uncertainty concerning when the spectrum will be available and reduces the value placed on the spectrum by potential bidders. The encumbrance of the 700 megahertz band reduces both the amount of money that the auction would be likely to produce and the probability that the spectrum would be purchased by the entities that valued the spectrum the most and would put the spectrum to its most productive use.*

18. The transition to digital television is a massive and complex undertaking, affecting virtually every segment of the television industry and every American who watches television. The Commission has been continuously involved in the migration to digital television by, among other things, adopting a standard for digital broadcasting, creating a DTV Table of Allotments, awarding DTV licenses, establishing operating rules for the new service, and overseeing the physical build-out of digital broadcast stations.

#### **a. Build-Out Status**

19. In 1997, the Commission set dates for construction and operation of broadcasters’ allotted digital broadcast channels. Pursuant to the construction schedule set forth in section 73.624(d) of the Commission’s rules, affiliates of the top four networks in the top ten television markets were required to complete construction of their digital facilities by May 1, 1999; top four network affiliates in markets 11-30 by November 1, 1999; all remaining commercial television stations by May 1, 2002; and all

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<sup>37</sup> 47 U.S.C. § 337(a).

<sup>38</sup> 47 U.S.C. § 309(j)(15)(C)(iv)(II).

noncommercial television stations by May 1, 2003.<sup>39</sup>

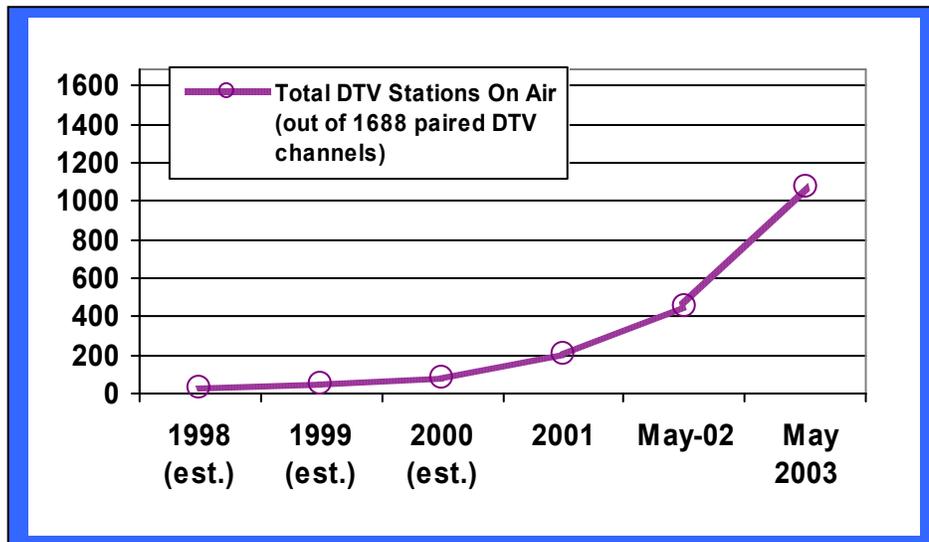
20. In the *First DTV Periodic Review MO&O*, in order to encourage construction of facilities by broadcasters that might have been postponing construction in the face of interference protection deadlines and thereby slowing transition progress, we decided to allow stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining for the time being DTV interference protection to provide full replication at a later date. We also determined that we would continue to provide DTV interference protection to the maximized service area specified in outstanding DTV construction permits for facilities in excess of those specified in the DTV Table of Allotments. By permitting stations to elect a more graduated approach to providing DTV service, we allowed stations to focus their energies initially on providing digital service to their core communities, while allowing stations to increase operating hours and expand their coverage area as the transition progresses. For broadcasters unable to complete even the minimum permitted facilities by the applicable deadline, however, we revised our rules to permit applicants to seek an extension of time to construct a digital television station where the applicant can demonstrate financial hardship.<sup>40</sup>

21. As of May 21, 2003, 1,578 television stations in all markets (representing approximately 94% of all stations) have been granted a DTV construction permit or license. There are a total of 1,081 stations that now are broadcasting a digital signal, 493 with licensed facilities or program test authority and 588 operating pursuant to special temporary authority (“STA”) or experimental DTV authority. The following graph shows the progress in build out status of DTV service since the end of 2001.

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<sup>39</sup> See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Fifth Report and Order*, 12 FCC Rcd 12809, 12840-41 ¶ 76 (1997); 47 C.F.R. § 73.624(d).

<sup>40</sup> To qualify for an extension of time to construct a digital television facility under the financial hardship standard, the applicant must demonstrate that the cost of meeting the minimum build-out requirements exceeds the station’s financial resources. The applicant must provide an itemized estimate of the costs of construction and a detailed explanation of why its financial condition precludes such an expenditure.



**DTV STATIONS AUTHORIZED TO BE ON THE AIR**

As of May 21, 2003

Category	# DTV Paired Licenses	# DTV Stations on Air	% On the Air	With Licensed Facility or Program Tests	With STAs
Top 30 Market Network Affiliates	119	113	95.0%	108	5
Other Commercial*	1196	796	66.6 %	273	523
Non-Commercial Educational**	373	172	46.1%	112	60
<b>Total</b>	<b>1688</b>	<b>1081</b>	<b>64.0%</b>	<b>493</b>	<b>588</b>

\* May 1, 2002 Build Out Deadline

\*\* May 1, 2003 Build Out Deadline

22. The above chart reflects that in the top thirty television markets, 113 of the 119 network-affiliated television stations are on the air in digital, 108 with licensed DTV facilities or program test authority and 5 with STAs. In markets 1-10, of the 40 network affiliates due to be on the air by May 1, 1999, 38 are on the air with a digital signal.<sup>41</sup> In markets 11-30, 71 of 79 network affiliate stations required to be on the air by November 1, 1999, have constructed their licensed DTV facilities. Seventy-five of these stations now are on the air. Seven stations have been granted additional time to complete

<sup>41</sup>The remaining two were licensed and on the air prior to September 11, 2001, but are now off the air due to the attack on the World Trade Center. Two network-affiliated television stations in New York City (WABC-DT and WNBC-DT), as well as three other DTV stations (WWOR-DT, WPIX-DT, and WNET-DT) in that market, were taken off the air as a result of the September 11, 2001, attack and have not yet rebuilt their DTV facilities. Except for WWOR-DT, these stations are not broadcasting a digital signal. WWOR-DT is broadcasting in digital from an antenna shared with WNYW-DT on the Empire State Building.

construction of their digital facilities.<sup>42</sup>

23. Approximately 1,196 other commercial television stations were due to commence digital broadcasts by May 1, 2002. As of May 21, 2003, 796 of these stations are broadcasting a digital signal. In addition, approximately 373 noncommercial educational television stations were required to commence digital operations by May 1, 2003. As of May 21, 2003, 172 of these stations are broadcasting a digital signal.

24. A total of 843 commercial television stations subject to the May 1, 2002, deadline requested an initial extension of time to complete construction. The Media Bureau granted 772 of these initial extension requests upon showings that the delay in completing construction was due to financial hardship or to circumstances that were either unforeseeable or beyond the permittee's control. The DTV construction permits for these stations were extended for a six-month period, until November 1, 2002. As of May 21, 2003, 602 of these stations have requested an additional extension of time to construct, and 527 of these requests have been granted, while 68 have been dismissed. The seven remaining extension requests remain pending. Most stations state that DTV service will be operational during the next six month extension period. Eighty-four of these stations have requested a third extension of time, with four dismissed and 80 pending.

25. Seventy-one stations that requested an extension of the May 1, 2002 construction deadline were found not to have taken all reasonable steps to complete construction of their DTV facilities in an expeditious manner. Accordingly, the Media Bureau denied these extension applications by letter rulings and admonished each permittee for its failure to comply with its DTV construction obligations. Each permittee was given until December 1, 2002 to come into compliance with the DTV construction rule and was directed to submit, within 30 days, an initial report outlining the steps it intended to take to complete construction. These permittees also were required to file a subsequent progress report with the Commission.<sup>43</sup> As of June 9, 2003, 69 of these stations have commenced DTV operation.

26. As of May 21, 2003, a total of 214 non-commercial television stations subject to the May 1, 2003, deadline requested an initial extension of time to complete construction. Three stations' extension

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<sup>42</sup> In the *DTV Extension Order and NPRM*, we granted the following stations in markets 11-30 additional time to complete construction of their DTV facilities: WVIT-DT, New Britain, Connecticut; WTIC-DT and WFSB-DT, Hartford, Connecticut; WTVJ-DT, Miami, Florida; and KUSA-DT, KMGH-DT, and KCNC-DT, Denver, Colorado. Requests for Extension of the October 5, 2001, Digital Television Construction Deadline, *Order and Notice of Proposed Rule Making*, 17 FCC Rcd 9962, 9968 ¶ 21 (2002). The Connecticut stations reported delays in obtaining zoning approval and noted that ongoing Commission channel swap rulemakings affect their digital stations; WTVJ-DT in Miami also is involved in a pending rulemaking which would result in the change of its DTV allotment; the Denver stations report that they have been unable to complete construction of their DTV facilities on Lookout Mountain, outside of Denver, due to an ongoing unresolved local tower siting dispute. *See id.* In February, 2003, we granted these stations an additional six months to complete their DTV facilities, finding that the licensees made reasonable and diligent efforts to construct their authorized facilities, but that each encountered delays that were unforeseeable or beyond their control and that these delays prevented timely construction of their DTV facilities. Requests for Further Extension of the Digital Television Construction Deadline, *Order*, 18 FCC Rcd 2297 (2003).

<sup>43</sup> *See, e.g.*, Letter from W. Kenneth Ferree, Chief, Media Bureau to KSBI Licensee, L.P. (June 3, 2002), File No. BEPCDT-20020301AHU; Letter from W. Kenneth Ferree to Trinity Broadcasting Network, (June 3, 2002), File No. BEPCDT-20020304AGK. Copies of these letters are available at [www.fcc.gov/mb/video/files/dendtvextreq.pdf](http://www.fcc.gov/mb/video/files/dendtvextreq.pdf).

requests were dismissed since the stations had gone on the air with full-power DTV facilities or pursuant to a Special Temporary Authorization for low-power DTV operations. The remaining 211 stations were granted six-month extensions, mainly because of difficulties encountered by the stations in implementing award grants from the Corporation for Public Broadcasting and the U.S. Department of Commerce. Of these 211 stations, approximately 10 stations have come on the air since the time they received the extension or will be coming on the air shortly.

27. On April 16, 2003, the Commission released an Order establishing remedial measures to be followed when a television station fails to meet its DTV construction deadline and fails to adequately justify an extension of its DTV construction deadline.<sup>44</sup> Under the three-step graduated sanction process we will first deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station will then have six months to complete its construction, subject to reporting requirements and possible additional sanctions in the interim. Under the second step in our approach, if the station has not come into compliance with the DTV construction rule within the six-month period, then, absent extraordinary and compelling circumstances, we will issue a Notice of Apparent Liability for forfeiture to the licensee and require that the station report every thirty days on its proposed construction milestones and its efforts to meet those milestones. Under the third and final step in our approach, if the station has continued to fail in its efforts to come into compliance with the DTV construction rule within the second six-month period of time (*i.e.*, one year from the date of the formal admonition), then, absent extraordinary and compelling circumstances, we will consider its construction permit for its DTV facilities to have expired and we will take whatever steps necessary to rescind the station's DTV authorization. The Commission's Media Bureau staff may grant relief from this graduated enforcement scheme or impose more severe steps more quickly should circumstances in a particular case warrant.

#### **b. Ongoing Commission Efforts to Spur DTV Transition**

28. The Commission has taken an aggressive role in advancing the DTV transition using all of the tools at its disposal. A number of Commission initiatives have produced results in the year since the enactment of the Auction Reform Act.

29. Before passage of the Auction Reform Act, in October 2001, Chairman Michael Powell created the Digital Television Task Force to review the ongoing transition to DTV, and help coordinate the Commission's efforts to facilitate the transition and promote the rapid recovery of broadcast spectrum for other uses. The Task Force and the Commission's Media Bureau have organized numerous informal gatherings of interested parties designed to make progress on especially difficult and contentious issues. Subsequently, in April 2002, Chairman Powell publicly challenged the industries involved in the DTV transition to take specific voluntary steps to move the transition forward. The voluntary plan sought to advance several key policy objectives: (1) increasing the level of compelling digital content available to American consumers; (2) providing convenient access to that content to consumers; and (3) educating consumers about digital television. Among other things, the plan called for the provision of more high definition ("HDTV") or other "value-added" DTV programming, increased cable deployment of DTV programming services and the inclusion of over-the-air DTV tuners in new television receivers on a

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<sup>44</sup> Remedial Steps For Failure to Comply With Digital Television Construction Schedule, *Report and Order and Memorandum Opinion and Order*, 18 FCC Rcd 7174 (2003).

phased-in basis.<sup>45</sup>

30. In response, virtually every industry made commitments to the challenges posed in Chairman Powell's plan in order to advance the transition.<sup>46</sup> For example, in May 2002, the ten largest cable operators (representing more than 85% of cable subscribers nationwide) agreed to roll-out HDTV services on their larger systems across the country.<sup>47</sup> As of June 2003, the National Cable and Telecommunications Association ("NCTA") reported that cable HDTV service passed 55 million homes in 112 television markets.<sup>48</sup> On April 29, 2003, Chairman Powell, in a letter to Congress, indicated that he instructed the Commission's Media Bureau to issue requests for information that will give the Commission a more detailed picture of the status of the digital television transition.<sup>49</sup> Those requests were issued on May 21, 2003.<sup>50</sup> As with the voluntary plan issued in April 2002, these requests are directed to each of the industries involved in the transition. The requests follow up on certain commitments made by industry in response to that plan. In addition, the requests seek information on other issues that may help the Commission develop future policy initiatives, including information on the availability of compelling digital programming, digital cable carriage, digital tuner capabilities, and consumer awareness about the transition to digital television.

31. The Commission is also conducting a number of formal rulemaking proceedings to advance the digital transition:

**(i) Digital Must Carry**

32. The Commission's ongoing *DTV Must Carry* proceeding involves issues relating to cable carriage of digital television broadcast stations.<sup>51</sup> In 2001, the Commission addressed issues related to the cable carriage of digital broadcast signals including retransmission consent, channel capacity, signal quality, scope of signal carriage, material degradation, channel location, market modifications, digital signal carriage on PEG channels (public, educational, and government access channels), complaints and enforcement, subscriber notification, program exclusivity, and tiers and rates. In addition to resolving a

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<sup>45</sup> See Letters from Chairman Michael K. Powell to Senator Ernest F. Hollings and Representative W. J. "Billy" Tauzin, (Apr. 4, 2002), at [www.fcc.gov/dtv](http://www.fcc.gov/dtv).

<sup>46</sup> See July 11, 2002 Statement by Chairman Michael K. Powell, available at [www.fcc.gov/dtv](http://www.fcc.gov/dtv). Copies of letters from participating industries, detailing the initiatives they plan to take in response to the Chairman's plan, are available at [www.fcc.gov/dtv/industryletters.pdf](http://www.fcc.gov/dtv/industryletters.pdf).

<sup>47</sup> Letter from Robert Sachs, President NCTA, to Chairman Michael K. Powell (May 1, 2002). This commitment includes the largest cable operators, including AT&T Broadband (now Comcast), Comcast, AOL-Time Warner, Charter, Cox, Adelphia, Cablevision, Mediacom, Insight and CableOne.

<sup>48</sup> Robert Sachs, President NCTA, Remarks to the Opening General Session, National Show (June 9, 2003) found on the NCTA web site at [http://www.ncta.com/pdf\\_files/RJS\\_Cable03.pdf](http://www.ncta.com/pdf_files/RJS_Cable03.pdf).

<sup>49</sup> See Letters from Chairman Michael K. Powell to Senator John McCain, Senator Ernest F. Hollings, Senator Conrad Burns, Representative W. J. "Billy" Tauzin, Representative John Dingell, Representative Fred Upton, and Representative Edward Markey (Apr. 29, 2003).

<sup>50</sup> Templates of these letters can be found at <http://www.fcc.gov/mb/dtv/dtvquestionnaires.html>.

<sup>51</sup> Carriage of the Transmissions of Digital Television Broadcast Stations, *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598 (2001) ("*DTV Must Carry Order and FNPRM*").

number of technical and legal matters, the *DTV Must Carry Order* clarified that a new digital-only TV station, commercial or non-commercial, can immediately assert its right to carriage on a local cable system. The Commission issued a *Further Notice of Proposed Rulemaking* to define the scope of “program-related” in the digital context. Regarding the issue of whether a local TV station may assert a right to carriage for both its analog and digital signals (“dual carriage”), the *DTV Must Carry Order* tentatively concluded that, based on the existing record, such a requirement appears to burden cable operators’ First Amendment interests more than is necessary to further a substantial governmental interest.

### (ii) Digital Tuner Requirement

33. On August 8, 2002, the Commission adopted an Order requiring that all TV receivers manufactured or shipped in the U.S. with screen sizes greater than 13 inches be capable of receiving DTV signals over the air no later than July 1, 2007.<sup>52</sup> This requirement will be phased in beginning with the largest sets in 2004 to minimize the cost impact on consumers. In addition to facilitating the transition to digital television by promoting the availability of reception equipment, this Order protects consumers by ensuring that their television sets go on working in the digital world just as they do today.

### (iii) Digital Copy Protection

34. On August 8, 2002, the Commission adopted a *Notice of Proposed Rulemaking* (“NPRM”) to explore whether it could and should mandate use of a copy-protection mechanism to protect digital broadcast content from unauthorized copying and redistribution.<sup>53</sup> The *NPRM* first asked whether content providers’ piracy concerns have caused or will cause them to withhold high quality content from broadcast channels, and whether the lack of such programming could delay the DTV transition. If a problem is found to exist, the Commission then asked whether it can and should adopt a “broadcast flag” or other copy protection mechanism to address it. As for how such a system would work, the Commission generally requested comment on compliance and robustness rules, technical impediments, and enforcement issues. The Commission also sought comment on the impact a content protection mechanism might have on consumers—both on their ability to make copies of broadcast television content and on the consumer electronics technology in their homes. Finally, the Commission sought comment on its authority to adopt rules in this area, including explicit authority under Section 336 of the Communications Act as well as ancillary jurisdiction.

### (iv) Digital Cable Compatibility

35. On January 10, 2003, the Commission sought comment on proposed rules for “plug and play” cable compatibility that will allow consumers to plug their cable directly into their digital TV set without

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<sup>52</sup> Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Second Report and Order and Second Memorandum Opinion and Order*, 17 FCC Rcd 15978, 15996 ¶ 40 (2002). Receivers with screen sizes 36 inches and above -- 50% of a responsible party’s units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005. Receivers with screen sizes 25 to 35 inches -- 50% of a responsible party’s units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006. Receivers with screen sizes 13 to 24 inches -- 100% of all such units must include DTV tuners effective July 1, 2007. TV Interface Devices VCRs and DVD players/recorders, etc. that receive broadcast television signals -- 100% of all such units must include DTV tuners effective July 1, 2007. *Id.*

<sup>53</sup> Digital Broadcast Copy Protection, *Notice of Proposed Rulemaking*, 17 FCC Rcd 16027 (2002).

the need for a set-top box.<sup>54</sup> Specifically, the *FNPRM* seeks comment on a Memorandum of Understanding (“MOU”) filed with the Commission by the cable and consumer electronics industries detailing an agreement on a cable compatibility standard for an integrated, one-way digital cable television receiver, as well as other unidirectional digital cable products.<sup>55</sup> The MOU contains both voluntary commitments by the industries, as well as proposed technical and encoding rules.

**(v) Second DTV Periodic Review**

36. On January 27, 2003, the Commission began the Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television.<sup>56</sup> The *Second Periodic Review* seeks comment on additional issues essential to ensuring continued progress on the DTV transition. Among other things, the Commission is seeking comment on new channel election, replication, and maximization deadlines for broadcast television service. The Commission is also seeking comment on a number of other issues concerning the protection that must be provided to incumbent analog and digital broadcasters in the 700 MHz band during the transition.

37. The *Second Periodic Review* raises a number of other issues, including: (1) whether the Commission should retain, revise, or remove the requirement that licensees simulcast a certain percentage of their analog channel on their DTV channel; (2) whether the Commission needs to take steps to assist noncommercial television stations in the transition; (3) whether labeling requirements for TV-related consumer equipment would assist the transition and protect consumers; (4) whether and how the Commission should license multiple lower-powered transmitters, similar to cellular telephone systems, called distributed transmission systems; (5) whether broadcasters should be required to include Program System and Information Protocol (“PSIP”) information within their digital signals to ensure the availability of certain functions; (6) whether the Commission should adopt digital V-chip requirements; and (7) what station identification requirements should apply to digital stations.

38. The Communications Act states that broadcast licenses for analog television service expire on December 31, 2006.<sup>57</sup> The Commission is required to reclaim this spectrum from broadcasters unless one of three conditions set forth in Section 309(j)(14)(B) of the Act is met. Section 309(j)(14)(A) and (B) provide:

(A) LIMITATIONS ON TERMS OF TERRESTRIAL TELEVISION BROADCAST LICENSES. – A television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.

(B) EXTENSION. – The Commission shall extend the date described in subparagraph (A) for any station that requests such an extension in any television market if the

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<sup>54</sup> Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, *Further Notice of Proposed Rule Making*, 18 FCC Rcd 518 (2003).

<sup>55</sup> Receivers manufactured pursuant to the MOU would still need an external navigation device to receive certain advanced features, such as certain electronic programming guides and video on demand.

<sup>56</sup> *DTV Second Periodic Review NPRM*, 18 FCC Rcd 1279.

<sup>57</sup> 47 U.S.C. § 309(j)(14)(A).

Commission finds that –

- (i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission’s applicable construction deadlines for digital television service in that market;
- (ii) digital-to-analog converter technology is not generally available in such market; or
- (iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market –
  - (I) do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and
  - (II) do not have either –
    - (a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or
    - (b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.<sup>58</sup>

The *NPRM* in the *Second Periodic Review* asks how the Commission should interpret the extension criteria. Specifically, the *NPRM* seeks comment on when stations should file an extension request with the Commission, how the Commission should define a “television market” for purposes of this provision, how it should interpret the requirement that digital-to-analog converter technology be “generally available” in a television market, and how it should interpret the test to determine if at least 85 percent of viewers have access to digital broadcast signals either over-the-air or through a subscription service such as cable or satellite.

39. The Commission received mixed comments in response to the *Second DTV Periodic Review NPRM*, regarding the 700 MHz band and its role in the transition to DTV. On the one hand, operators and developers of new wireless services generally support earlier deadlines for construction, channel election, and loss of interference protection for broadcasters with DTV assignments in channels 52-69.<sup>59</sup> They generally oppose any extensions of these deadlines, arguing that any extensions will prolong the

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<sup>58</sup> 47 U.S. C. § 309(j)(14)(A), (B). *See also DTV Second Periodic Review NPRM*, 18 FCC Rcd at 1303-14 ¶¶ 69-94 (seeking comment on how the Commission should interpret portions of Section 309(j)(14)(B)’s three-part test); 47 U.S. C. § 309(j)(14)(C) (requiring Commission to reclaim and organize spectrum recovered from analog broadcasting).

<sup>59</sup> *See, e.g.*, Comments submitted by: Access Spectrum, LLC; KanOkla Telephone Association, Inc., Peoples Telephone Cooperative, Inc., and Arctic Slope Telephone Association Cooperative; Motorola, Inc.; Datacom Wireless, LLC; Aloha Partners, L.P.; Crown Castle USA, Inc.; Flarion Technologies, Inc.; and Harbor Wireless, LLC., MB Docket No. 03-15.

DTV transition well past the end of 2006 and discourage potential investors in their services.<sup>60</sup> In addition, many wireless service providers request that they should not be required to protect DTV broadcasters from interference beyond their actual operating parameters if they are not operating at full capacity.<sup>61</sup> Some wireless service providers also suggest methods of band-clearing that would speed up the clearing of the upper and lower 700 MHz channels.<sup>62</sup> Commenters also suggest that strict deadlines and band-clearing arrangements are necessary in order to more quickly recover spectrum necessary to support public safety uses.<sup>63</sup>

40. Conversely, broadcasting commenters, especially smaller broadcasters and public television stations, request additional time to construct digital facilities and to operate dual analog-digital facilities.<sup>64</sup> Public television stations specifically request that the financial hardship standard for grant of an extension of time to construct a digital television station be applied more liberally to public television stations to reflect their unique means of funding.<sup>65</sup> Smaller broadcasters and public television stations also generally request that replication and maximization deadlines apply only at the end of the transition, some arguing that digital set penetration does not warrant full service replication until that time.<sup>66</sup> Some commenters, wireless service providers and broadcasters alike, also suggest that band-clearing and the transition to digital television would be facilitated with some type of cable carriage requirement for DTV signals.<sup>67</sup>

### **c. Recovery of Spectrum for New Uses; Status of Licensing of New Services in 700 MHz Bands**

41. As mentioned above, spectrum recovery is an integral part of the DTV transition process. The Commission's efforts in this regard have been guided by the directives of Sections 337(a) and 309(j)(14) of the Communications Act. Although significant portions of the 700 MHz bands remain

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<sup>60</sup> See, e.g., Comments of Cavalier Group, LLC at 2; Comments of Flarion Technologies, Inc. at 2; Comments of Harbor Wireless, LLC at 3-4, MB Docket No. 03-15.

<sup>61</sup> See, e.g., Comments of Cavalier Group, LLC at 26; Comments of Access Spectrum, LLC at 10-11; Comments of Datacom Wireless, LLC at 7, MB Docket No. 03-15.

<sup>62</sup> See, e.g., Comments of Statewide Wireless Network – New York State Office for Technology at 11-13; Comments of Cavalier Group, LLC at 22. See also Comments of Paxson Communications Corporation at 29-32 MB Docket No. 03-15.

<sup>63</sup> See, e.g. Comments of Public Safety Wireless Network Program; Comments of Statewide Wireless Network – New York State Office for Technology, MB Docket No. 03-15.

<sup>64</sup> See generally Comments of the Association of Public Television Stations, the Corporation for Public Broadcasting and the Public Broadcasting Service (Public Television); Comments of Block Communications, Inc.; Comments of Hubbard Broadcasting, Inc., MB Docket No. 03-15.

<sup>65</sup> Comments of Public Television at 14-16, MB Docket No. 03-15.

<sup>66</sup> See, e.g., Comments of Hubbard Broadcasting, Inc. at 4; Comments of Public Television at 25-26, MB Docket No. 03-15.

<sup>67</sup> Comments of Paxson Communications Corporation, Comments of Association of Public Television Stations, the Corporation for Public Broadcasting and the Public Broadcasting Service; Comments of Cavalier Group, LLC at 22.

encumbered by TV broadcast operations, the Commission has moved forward with the licensing of public safety entities and other new users in the 700 MHz bands, as directed by statute. The following is a summary of the status of licensing various new uses of these bands.

**(i) Public Safety Use of the Upper 700 MHz Band**

42. Pursuant to Section 337(a)(1) of the Communications Act, the Commission has reallocated 24 of the 60 megahertz of spectrum in the Upper 700 MHz Band for public safety services. This allocation covers the 764-776 and 794-806 MHz segments of the band. As explained below, licensing to states for public safety purposes is well underway.

43. For the twenty-four megahertz of spectrum in the Upper 700 MHz designated for public safety services, the Commission adopted the following band plan:

- 12.5 MHz designated for General Use (50% of total allocation)
- 2.6 MHz designated for Interoperability (10.8%)
- 2.4 MHz designated for State Licenses (10%)
- 0.3 MHz designated for Low Power Operations (1.25%)
- 0.2 MHz designated for Secondary Trunking (0.8%)
- 6.0 MHz designated as Reserve (25%)

44. The General Use spectrum, which consists of both 6.25 kHz and 50 kHz channels (referred to as narrowband and wideband, respectively), is licensed utilizing a regional planning approach akin to that used for certain 800 MHz band public safety frequencies. There are 55 regions for the Upper 700 MHz public safety spectrum. To date, 37 regions have held their first planning meeting and elected a chairperson. We are aware that a number of these regions are actively working on their respective regional plans. In this regard, we note that Region 5, which consists of Southern California, previously submitted a regional plan for Commission review. This plan was returned to the region for inclusion of additional information critical to the Commission's analysis of such plan.

45. The Interoperability spectrum, which consists of both narrowband and wideband channels, is subject to administrative and technical oversight at the state level. States had the option of performing such administration through newly-formed State Interoperability Executive Committees or an equivalent state agency. States were required to notify the Commission by December 31, 2002 whether they would administer the Interoperability spectrum. In the event a state declined to do so, the 700 MHz regional planning committee for that state would perform such functions. To date, 38 states and the District of Columbia have indicated that they will administer the Interoperability spectrum. For the remaining states, Puerto Rico and the Virgin Islands, administration of the Interoperability spectrum will be the responsibility of the relevant 700 MHz Regional Planning Committee.

46. The State Licenses are 2.4 MHz geographic area licenses based on state boundaries. They are issued to the Governor of each state or its designee. In 2000, the Commission indicated that States had until December 31, 2001 to file an application for the State Licenses spectrum. Further, if a State did not apply for the spectrum it would revert to General Use spectrum within that state and be subject to administration by the relevant Regional Planning Committee. Each of the 50 states submitted an application for the State License. All of these applications were granted on or before February 1, 2002.

47. The Low Power Operations channels were designated in response to a request for low-power, person-to-person communications and personnel accountability reporting system for on-scene firefighting use; however, they are not restricted to such use. Specifically, there are twenty-four channel pairs designated for mobile operations not to exceed an effective radiated power of 2 watts. Access to eighteen

of these pairs can be gained through the regional planning process. The remaining six channel pairs are available on an itinerant basis, that is, can be operated at unspecified locations for varying periods of time.

48. The Secondary Trunking spectrum consists of thirty-two channels that can only be used in connection with adjacent Interoperability channels in a trunked system. Because they are combined with channels within the Interoperability spectrum, they are administered in the same fashion as the Interoperability spectrum.

49. The Reserve Spectrum was so designated in order to allow for future needs and future developments in broadband technologies. The Commission indicated a desire to retain a relatively small amount of Upper 700 MHz public safety spectrum in reserve in order to have the flexibility to fine-tune the band plan with the benefit of experience gained after radio systems are deployed in the band. It further envisioned that such spectrum could possibly be used to accommodate needs such as exclusive high speed data or additional interoperability spectrum. It also indicated its willingness to review the status of the spectrum reserve once the 700 MHz band regional planning process was completed.

**(ii) New Commercial Services in the Upper 700 MHz Band**

50. The Commission previously announced plans to use combinatorial bidding methodology in its auction of licenses for the 747-762 and 777-792 MHz band (Auction No. 31), which will permit bidders to bid on self-defined groups of licenses. A total of 12 licenses, based on the six Economic Area Groupings (“EAGs”) that comprise the United States and its territories, will be available for auction. An auction of this spectrum had been scheduled to begin on June 19, 2002, but was delayed at Congress’s direction pursuant to the Auction Reform Act.<sup>68</sup>

**(iii) Upper 700 MHz Guard Bands**

51. The Commission dedicated 6 of the 36 megahertz of commercial spectrum in the Upper 700 MHz Band for guard bands (consisting of the 746-747, 762-764, 776-777 and 792-794 MHz band segments), which are intended to provide public safety licensees with an additional measure of interference protection from operations in the commercial bands. Guard Band Managers, a new class of commercial licensee, make this spectrum available to system operators or directly to end users through private, written contracts (leases). The initial auction of Upper 700 MHz Guard Band licenses was completed on September 21, 2000.<sup>69</sup> Nine bidders won (and have since been granted) 96 licenses with net bids of nearly \$520,000,000. The subsequent auction of the eight remaining Guard Band Manager licenses concluded on February 21, 2001, and yielded nearly \$21 million. Three winning bidders were awarded eight licenses in that auction.

**(iv) Lower 700 MHz Band**

52. The Commission has reallocated the 48 megahertz of spectrum in the Lower 700 MHz band (698-746 MHz) from conventional TV broadcast services, and established licensing, service and competitive bidding rules for new services. New licensees in this band will be permitted to offer a broad

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<sup>68</sup> As is explained above (*see* para. 2, *supra*), the Commission has not yet rescheduled this auction.

<sup>69</sup> Complete information concerning all auctions, including individual round results and auction outcomes, may be found on the Commission’s web site at: <http://wireless.fcc.gov/auctions/>.

range of fixed and mobile services.<sup>70</sup> Licenses for 36 megahertz of the spectrum in the Lower 700 MHz Band (the A, B, D, and E blocks) have EAG service areas (consistent with the Upper 700 MHz Commercial Band) and one block (C block) of spectrum (12 megahertz total) uses the 734 Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”). Pursuant to a directive in the Auction Reform Act, an initial auction of the C and D blocks of the Lower 700 MHz Band was completed in September 2002 (Auction No. 44). In that auction 102 winning bidders won 484 licenses.<sup>71</sup> An auction of the licenses that went unsold in Auction No. 44 were made available in Auction No. 49, which closed on June 13, 2003; in that auction, 35 bidders won 251 licenses. The two auctions of the Lower 700 MHz C and D blocks (18 megahertz of spectrum) yielded \$145,467,590 in total net winning bids.

## **2. Plans for Allocating and Assigning Additional Spectrum for Advanced Wireless (3G) Services**

53. Two of the legislative findings of the Auction Reform Act concern the status of the Commission’s initiative to identify, allocate, and assign spectrum for advanced wireless services.

### **a. Identification and Allocation of 3G Spectrum**

54. Auction Reform Act’s second finding reads:

*No comprehensive plan yet exists for allocating additional spectrum for third-generation wireless and other advanced communications services. The Federal Communications Commission should have the flexibility to auction frequencies in the 700 megahertz band for such purposes.*

55. The Commission has taken a number of substantial steps to free up spectrum that can be used to provide AWS, including 3G or “IMT-2000” services. First, following intensive coordination with the NTIA, in November 2002 the Commission issued an order allocating 90 megahertz of spectrum for AWS in two contiguous blocks (1710-1755 and 2110-2155 MHz).<sup>72</sup> This spectrum was designated for fixed and mobile services and can be paired to provide AWS services. In keeping with the Commission’s flexible use policies, this allocation could be used by current licensees to expand their capacity for offering wireless voice and data services. Alternately, it could be used by either current licensees or new entrants to support the development of entirely new applications distinct from existing wireless offerings.

56. Before these bands can be put to effective use, several additional steps are required. Most importantly, provisions must be made to relocate existing users to other spectrum. The 1710-1755 MHz band is currently used for Federal Government operations. NTIA originally identified the band for transfer in 1995 and indicated that the band could be made available to non-Federal Government users on a mixed-use basis in 2004. NTIA noted, however, that Federal Government use of the band would have to be protected indefinitely at 333 fixed microwave stations used by Federal Power Agencies, at 111

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<sup>70</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2001).

<sup>71</sup> See <http://wireless.fcc.gov/auctions/>. As of June 5, 2003, long form applications covering 404 of those licenses had been granted. Thirteen of the 107 long form license applications filed by Auction No. 44 winners remained pending.

<sup>72</sup> Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Second Report and Order*, 17 FCC Rcd 23193 (2002).

stations used for aviation-related safety communications, and at 16 sites used by Department of Defense fixed microwave, tactical radio relay, and aeronautical mobile stations. In July 2002, NTIA offered a plan that, if implemented, proposed to largely clear this band of Federal Government users by no later than December 31, 2008.<sup>73</sup> Along with requiring commercial users to reimburse Federal users' relocation costs, part of this plan requires the Commission to conduct a rulemaking that would reallocate other spectrum to accommodate Federal systems that otherwise would remain in the 1710-1755 MHz band indefinitely. The Commission will initiate this rulemaking proceeding in the near future, looking toward allocating spectrum for relocated Federal users.

57. The 2110-2155 MHz band largely consists of spectrum previously identified as suitable for new services as part of the Commission's *Emerging Technologies* proceeding.<sup>74</sup> However, to provide a contiguous block of spectrum for AWS at 2110-2155 MHz, the Commission had to reallocate five megahertz of spectrum currently licensed to the Multipoint Distribution Service (MDS) at 2150-2155 MHz.<sup>75</sup> The Commission is considering relocation spectrum and procedures for MDS operations in this band in another proceeding.<sup>76</sup> The Commission will use existing relocation rules to provide for the migration of incumbent point-to-point microwave licensees currently occupying the 2110-2150 MHz band.

58. In addition, in other ongoing proceedings the Commission is considering making additional spectrum available for AWS.<sup>77</sup> While the Commission is working to make these decisions as expeditiously as possible, it is unclear at this time when this additional spectrum, if allocated to AWS, would be made available to the public.

59. At the same time the Commission allocated 90 megahertz of spectrum for AWS, it also issued a notice of proposed rulemaking seeking comment on proposed licensing and service rules that would permit these bands to be used for any services consistent with the bands' fixed and mobile allocations.<sup>78</sup> Specifically, the notice sought comment on licensing, technical and operational rules, and proposed to

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<sup>73</sup> See An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands, U.S. Department of Commerce, NTIA (July 22, 2002) ("*NTIA AWS Assessment*"). This report is available on the Internet at: <http://www.ntia.doc.gov/ntiahome/threeg/va7222002/3Gva072202web.htm>.

<sup>74</sup> See generally Redevelopment of Spectrum to Encourage the Establishment of Services Using New and Innovative Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994), *aff'd*, *Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, "*Emerging Technologies* proceeding").

<sup>75</sup> This spectrum is part of a 10-megahertz block (12 megahertz in larger markets) that is allocated to MDS in the 2150-2160/62 MHz band.

<sup>76</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Use of the Universal Licensing System in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Notice of Proposed Rule Making and Memorandum Opinion and Order*, FCC 03-56 (rel. Apr. 2, 2003).

<sup>77</sup> See *AWS Third NPRM*, 18 FCC Rcd 2223.

<sup>78</sup> See *AWS Service Rules Notice*, 17 FCC Rcd 24135.

assign licenses in these bands through competitive bidding. It also sought comment on a number of auction-related issues, including the use of bidding credits, in connection with these licensing procedures. The record related to this notice has closed, and the Commission is preparing an order adopting service rules for these bands.<sup>79</sup> The Commission also needs to address pending petitions for reconsideration that were filed in response to the order allocating the two bands.<sup>80</sup> The Commission hopes to address these requests for reconsideration in the same time frame as the order adopting service rules for these bands.

#### b. NTIA's 3G Study

60. Auction Reform Act's third legislative finding, involving a then-pending study regarding possible spectrum sharing in connection with the 3G initiative, states:

*The study being conducted by the National Telecommunications and Information Administration in consultation with the Department of Defense to determine whether the Department of Defense can share or relinquish additional spectrum for third generation wireless and other advanced communications services will not be completed until after the June 19th auction date for the upper 700 megahertz band, and long after the applications must be filed to participate in the auction, thereby creating further uncertainty as to whether the frequencies in the 700 megahertz band will be put to their highest and best use for the benefit of consumers.*

61. The Commission's allocation proceeding was only one element of a much broader effort that involved many parties concerned with this spectrum, including the Commerce Department's National Telecommunications and Information Administration (NTIA) (responsible for administering the Federal Government's use of spectrum), the Department of Defense (a major user of Government spectrum), and numerous representatives of non-Government spectrum users.

62. The study referenced in the Auction Reform Act was a spectrum viability assessment undertaken by the interagency task force established by Commerce Secretary Evans and FCC Chairman Powell. NTIA, in conjunction with the Commission, the Department of Defense, and other federal government agencies, studied the viability of making all or a portion of the 1710-1770 MHz and 2110-2170 MHz bands available for advanced mobile wireless (3G) services. This study was released on July 22, 2002.<sup>81</sup> Under NTIA's plan, these bands could be largely cleared of Federal Government users by no later than December 31, 2008.<sup>82</sup> Along with requiring commercial users to reimburse Federal users' relocation costs, part of this plan requires the Commission to conduct a rulemaking that would reallocate other spectrum to accommodate Federal systems that otherwise would remain in the 1710-1755 MHz band indefinitely. The Commission will initiate this rulemaking proceeding in the near future, looking

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<sup>79</sup> If additional spectrum is made available for AWS in other proceedings, the Commission would have to make provision for band clearing as necessary, and conduct licensing and service rulemaking proceedings for that spectrum.

<sup>80</sup> See Petition for Partial Reconsideration by PCIA, The Wireless Infrastructure Association, ET Docket No. 00-258, filed Feb. 24, 2003; Joint Petition for Reconsideration of Sirius Satellite Radio Inc. and XM Radio Inc., ET Docket No. 00-258, filed Feb. 24, 2003; Sprint Corporation Petition for Reconsideration, ET Docket No. 00-258, filed Feb. 24, 2003; The Wireless Communications Association International, Inc, Petition for Reconsideration, ET Docket No. 00-258, filed Feb. 24, 2003.

<sup>81</sup> *NTIA AWS Assessment*.

<sup>82</sup> *Id.*

toward allocating spectrum for relocated Federal users.

### 3. Other Concerns and Considerations For Timing of 700 MHz Auctions

63. The Auction Reform Act indicates that Congress also had some concerns beyond the 3G and DTV initiatives, including economic conditions and the issue of interference to public safety users in the 800 MHz bands. The status of those matters are discussed below.

#### a. Changed Circumstances Since 1997

64. The first legislative finding of the ARA concerns changes in telecommunications markets since the enactment of the Balanced Budget Act of 1997. In particular, this finding states:

*Circumstances in the telecommunications market have changed dramatically since the auctioning of spectrum in the 700 megahertz band was originally mandated by Congress in 1997, raising serious questions as to whether the original deadlines, or the subsequent revision of the deadlines, are consistent with sound telecommunications policy and spectrum management principles.*

65. In this finding, Congress indicated that unforeseen events had wrought considerable change in the spectrum management landscape since the enactment of the Balanced Budget Act of 1997. In the sections below, we discuss the concerns identified by Congress in the Auction Reform Act, and summarize developments in those areas in the period since the enactment of the Auction Reform Act.

66. Over the past year, some sources of uncertainty that may impact the telecommunications market have been minimized.<sup>83</sup> While the telecom market in general has not rebounded yet, there are some positive signs in the wireless sector. Some of the key metrics reported by mobile telephone operators, such as subscriber growth, average monthly usage per subscriber, and average revenue per subscriber demonstrate the increased demand for and reliance placed on mobile telephony services by consumers.<sup>84</sup> In addition, continued downward price trends, the continued expansion of mobile networks into new and existing markets, high rates of investment, and high rates of churn, when considered together with the other metrics, demonstrate a high level of competition for the large majority of mobile telephone consumers.<sup>85</sup>

67. We recognize that economic troubles and other uncertainties may linger in the background of any auction. We do not believe that it is appropriate or consistent with statutory objectives to allow such

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<sup>83</sup> For example, one area of uncertainty that had been lingering for several years – the treatment of auctioned licenses subject to installment payments in bankruptcy – has been at least partially resolved with the U.S. Supreme Court’s ruling in the NextWave litigation on January 27, 2003. *FCC v. Nextwave Personal Communications, Inc.*, 537 U.S. 293 (2003). In that decision, the Supreme Court affirmed the D.C. Circuit decision holding that section 525 of the Bankruptcy Code prohibited the Commission from canceling licenses issued to NextWave pursuant to a prior auction when NextWave, after filing for bankruptcy, failed to make the required installment payments to which it had agreed. *Id.*

<sup>84</sup> See Cellular Telecommunications and Internet Association, Semi-Annual Wireless Industry Survey <http://www.wow-com.com/industry/stats/surveys/>.

<sup>85</sup> See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Seventh Report*, 17 FCC Rcd 12985 (2002); Colette Fleming et al., “3Q02 Wireless 411 - Outlook,” UBS Warburg, Equity Research, Jan. 23, 2003.

problems to serve as the sole basis for delaying an auction. Nonetheless, in exercising our authority to schedule future auctions, we believe that “sound telecommunications policy and spectrum management principles” obligate us to take the telecommunications sector into account in our scheduling decisions.

**b. 800 MHz Public Safety Proceeding**

68. Congress also manifested concern with potential uncertainties arising out of the Commission’s ongoing proceeding to address interference issues facing public safety users of the 800 MHz bands. Auction Reform Act’s fourth finding reads:

*The Federal Communications Commission is also in the process of determining how to resolve the interference problems that exist in the 800 megahertz band, especially for public safety. One option being considered for the 800 megahertz band would involve the 700 megahertz band. The Commission should not hold the 700 megahertz auction before the 800 megahertz interference issues are resolved or a tenable plan has been conceived.*

69. In March 2002, the Commission initiated a rule making proceeding (WT Docket No. 02-55) aimed at improving public safety communications in the 800 MHz band. Specifically, the Commission solicited proposals on how best to remedy interference to 800 MHz public safety systems from cellularized commercial mobile radio systems operating in the same band in a manner that is consistent with minimum disruption to the existing licensing structure and assurance of sufficient spectrum for critical public safety communications. In the context of this proceeding, several parties, e.g., the Cellular Telecommunications and Internet Association, Cingular, the MFRAC, Inc., Motient Communications Company, and ARINC, have suggested that public safety systems be removed from the 800 MHz band to the non-public safety portion of the Upper 700 MHz. Under these proposals, the Upper 700 MHz would not be subject to competitive bidding and incumbent television stations would be required to vacate the spectrum by a date certain. Further, the 800 MHz public safety systems would be relocated to such Upper 700 MHz spectrum. Finally, the 800 MHz spectrum vacated by the public safety licensees would then be subject to competitive bidding to reimburse the costs incurred by public safety licensees in relocating to the Upper 700 MHz band. While we cannot prejudge the outcome of this proceeding, it should nonetheless be noted that implementation of such proposals would appear to require legislative action given that Section 337 of the Communications Act expressly requires that 36 megahertz of the Upper 700 MHz spectrum be used for commercial purposes.<sup>86</sup> To date, the Commission has not taken further action in this proceeding, though it is working closely with interested parties to resolve these issues. As we noted above, barring changes to our existing statutory authority, we do not believe the 800 MHz proceeding should implicate the timing of the 700 MHz auctions because substantial steps in the 800 MHz public safety interference proceeding will be taken well before any 700 MHz band auction is started, and certainly within the next several months.

**c. Voluntary Band-Clearing Policy**

70. The final legislative finding of the Auction Reform Act states:

*(1) The Commission's rules governing voluntary mechanisms for vacating the 700 megahertz band by broadcast stations--*

*(A) produced no certainty that the band would be available for advanced mobile*

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<sup>86</sup> See 47 U.S.C. § 337(a).

*communications services, public safety operations, or other wireless services any earlier than the existing statutory framework provides; and*

*(B) should advance the transition of digital television and must not result in the unjust enrichment of any incumbent licensee.*

71. As mentioned above, this band includes 24 megahertz of new public safety spectrum, which doubles the amount of public safety spectrum in the U.S. and provides vital interoperable bandwidth that will enable police, fire and emergency personnel to communicate with one another in times of crisis. However, the major urban areas where the need for additional public safety spectrum is most acute are the same areas in which this band is most encumbered by broadcast stations. Moreover, the Commission is constrained from making this spectrum fully available for public safety because incumbent television broadcasters, pursuant to statute, do not have to vacate their analog channels until 2006 and may seek to remain until at least 85 percent of the households in their market have access to DTV signals, whichever is later.<sup>87</sup> Based on its statutory authority, the Commission established policies that permit incumbent broadcasters to enter into arrangements with new licensees for the early, voluntary clearing of the Upper 700 MHz band to facilitate provisioning of public safety and commercial wireless services in these bands as soon as practicable.<sup>88</sup> The Commission also established somewhat different voluntary clearing policies in the Lower 700 MHz band.<sup>89</sup>

72. Subsequently, the Auction Reform Act was enacted.<sup>90</sup> Section 6 of the Auction Reform Act restricts the Commission from waiving certain broadcast interference standards and the minimum spacing requirements for certain proposals to relocate Channel 52-69 analog operations to a Channel 2-51 DTV allotment, if such waiver “will result in any degradation in or loss of service, or an increased level of interference to any television household except as the Commission’s rules would otherwise expressly permit, exclusive of any waivers previously granted.”<sup>91</sup>

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<sup>87</sup> See 47 U.S.C. § 309(j)(14)(A)-(B).

<sup>88</sup> See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *Upper 700 MHz First Report and Order*, 15 FCC Rcd 476 (2000); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845 at 20870-71 ¶ 61 (2000); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Third Report and Order*, 16 FCC Rcd 2703, 2718 at ¶ 36 (2001); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633 (2001).

<sup>89</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1094 n. 537 and 1095 ¶ 184 (2002).

<sup>90</sup> Auction Reform Act.

<sup>91</sup> *Id.*, Section 6(a). These restrictions do not, however, apply to proposals to move Channel 63, 64, 68, or 69 analog operations to in-core DTV allotments “in order to make such frequencies available for public safety purposes.” *Id.*, Section 6(b).

73. The Media Bureau has granted one band-clearing application in the Upper 700 MHz band (Oklahoma City, OK, KOPX(TV), Channel 62) and one in the Lower 700 MHz band (Atlantic City, NJ, WWAC-TV, Channel 53). Additionally, one Lower 700 MHz band-clearing application appears to comply with the Commission's rules and policies but is awaiting Canadian approval (Vineyard Haven, MA, WDTX-TV, Channel 58). Also, there are 2 Lower 700 MHz band-clearing applications pending and currently being evaluated by Media Bureau staff (Akron, OH, WVPX-TV, Channel 59 and Goldvein, VA, WNVN, Channel 53). One Upper 700 MHz band-clearing application has been dismissed for failure to meet spacing requirements (Beattyville, KY, WLJC-TV, Channel 65). Finally, 10 Upper 700 MHz band-clearing applications may be dismissed based on Section 6 of the Auction Reform Act, which prohibits the Commission from waiving its spacing rules to grant certain band-clearing applications.

#### **IV. CONCLUSION**

74. We conclude that significant progress has been made in the past year in numerous aspects of the DTV and 3G proceedings. These proceedings, when complete, have great potential to improve the lives and safety of all Americans. Pursuant to the statutory scheme governing the 700 MHz bands, the Commission is continuing to move forward with the DTV spectrum recovery process to make these bands available to public safety entities and other new wireless users. For these reasons, we believe that it will be appropriate to announce new 700 MHz auction schedules near or upon completion of the 3G and DTV matters discussed above.

#### **V. ADMINISTRATIVE MATTERS**

75. This report is issued pursuant to the Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715, and Section 5(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(a).

76. IT IS ORDERED that the Secretary shall send copies of this report to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A - AUCTION REFORM ACT OF 2002****H.R. 4560**

To eliminate the deadlines for spectrum auctions of spectrum previously allocated to television broadcasting.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Auction Reform Act of 2002".

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) Circumstances in the telecommunications market have changed dramatically since the auctioning of spectrum in the 700 megahertz band was originally mandated by Congress in 1997, raising serious questions as to whether the original deadlines, or the subsequent revision of the deadlines, are consistent with sound telecommunications policy and spectrum management principles.

(2) No comprehensive plan yet exists for allocating additional spectrum for third-generation wireless and other advanced communications services. The Federal Communications Commission should have the flexibility to auction frequencies in the 700 megahertz band for such purposes.

(3) The study being conducted by the National Telecommunications and Information Administration in consultation with the Department of Defense to determine whether the Department of Defense can share or relinquish additional spectrum for third generation wireless and other advanced communications services will not be completed until after the June 19th auction date for the upper 700 megahertz band, and long after the applications must be filed to participate in the auction, thereby creating further uncertainty as to whether the frequencies in the 700 megahertz band will be put to their highest and best use for the benefit of consumers.

(4) The Federal Communications Commission is also in the process of determining how to resolve the interference problems that exist in the 800 megahertz band, especially for public safety. One option being considered for the 800 megahertz band would involve the 700 megahertz band. The Commission should not hold the 700 megahertz auction before the 800 megahertz interference issues are resolved or a tenable plan has been conceived.

(5) The 700 megahertz band is currently occupied by television broadcasters, and will be so until the transfer to digital television is completed. This situation creates a tremendous amount of uncertainty concerning when the spectrum will be available and reduces the value placed on the spectrum by potential bidders. The encumbrance of the 700 megahertz band reduces both the amount of money that the auction would be likely to produce and the probability that the spectrum would be purchased by the entities that valued the spectrum the most and would put the spectrum to its most productive use.

(6) The Commission's rules governing voluntary mechanisms for vacating the 700 megahertz band by broadcast stations--

(A) produced no certainty that the band would be available for advanced mobile communications services, public safety operations, or other wireless services any earlier than the existing statutory framework provides; and

(B) should advance the transition of digital television and must not result in the unjust enrichment of any incumbent licensee.

### SEC. 3. ELIMINATION OF STATUTORY DEADLINES FOR SPECTRUM AUCTIONS.

(a) FCC TO DETERMINE TIMING OF AUCTIONS - Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended by adding at the end the following new paragraph:

“(15) COMMISSION TO DETERMINE TIMING OF AUCTIONS -

“(A) COMMISSION AUTHORITY - Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.

“(B) TERMINATION OF PORTIONS OF AUCTIONS 31 AND 44- Except as provided in subparagraph (C), the Commission shall not commence or conduct auctions 31 and 44 on June 19, 2002, as specified in the public notices of March 19, 2002, and March 20, 2002 (DA 02-659 and DA 02-563).

“(C) EXCEPTION -

“(i) BLOCKS EXCEPTED - Subparagraph (B) shall not apply to the auction of--

“(I) the C-block of licenses on the bands of frequencies located at 710-716 megahertz, and 740-746 megahertz; or

“(II) the D-block of licenses on the bands of frequencies located at 716-722 megahertz.

“(ii) ELIGIBLE BIDDERS - The entities that shall be eligible to bid in the auction of the C-block and D-block licenses described in clause (i) shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.

“(iii) AUCTION DEADLINES FOR EXCEPTED BLOCKS - Notwithstanding subparagraph (B), the auction of the C-block and D-block licenses described in clause (i) shall be commenced no earlier than August 19, 2002, and no later than September 19, 2002, and the proceeds of such auction shall be deposited in accordance with paragraph (8) not later than December 31, 2002.

“(iv) REPORT - Within one year after the date of enactment of this paragraph, the Commission shall submit a report to Congress--

“(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i)); and

“(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.

“(D) RETURN OF PAYMENTS - Within one month after the date of enactment of this paragraph, the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses.’.

(b) CONFORMING AMENDMENTS-

(1) COMMUNICATIONS ACT OF 1934- Section 309(j)(14)(C)(ii) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)(C)(ii)) is amended by striking the second sentence.

(2) BALANCED BUDGET ACT OF 1997 - Section 3007 of the Balanced Budget Act of 1997 (111 Stat. 269) is repealed.

(3) CONSOLIDATED APPROPRIATIONS ACT - Paragraphs (2) and (3) of section 213(a) of H.R. 3425 of the 106th Congress, as enacted into law by section 1000(a)(5) of an Act making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes (Public Law 106-113; 113 Stat. 1501A-295), are repealed.

#### **SEC. 4. COMPLIANCE WITH AUCTION AUTHORITY.**

The Federal Communications Commission shall conduct rescheduled auctions 31 and 44 prior to the expiration of the auction authority under section 309(j)(11) of the Communications Act of 1934 (47 U.S.C. 309(j)(11)).

#### **SEC. 5. PRESERVATION OF BROADCASTER OBLIGATIONS.**

Nothing in this Act shall be construed to relieve television broadcast station licensees of the obligation to complete the digital television service conversion as required by section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)).

#### **SEC. 6. INTERFERENCE PROTECTION.**

(a) INTERFERENCE WAIVERS - In granting a request by a television broadcast station licensee assigned to any of channels 52-69 to utilize any channel of channels 2-51 that is assigned for digital broadcasting in order to continue analog broadcasting during the transition to digital broadcasting, the Federal Communications Commission may not, either at the time of the grant or thereafter, waive or otherwise reduce--

(1) the spacing requirements provided for analog broadcasting licensees within channels 2-51 as required by section 73.610 of the Commission's rules (and the table contained therein) (47 CFR 73.610), or

(2) the interference standards provided for digital broadcasting licensees within channels 2-51 as required by sections 73.622 and 73.623 of such rules (47 CFR 73.622, 73.623),

if such waiver or reduction will result in any degradation in or loss of service, or an increased level of interference, to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted.

(b) EXCEPTION FOR PUBLIC SAFETY CHANNEL CLEARING – The restrictions in subsection (a) shall not apply to a station licensee that is seeking authority (either by waiver or otherwise) to vacate the frequencies that constitute television channel 63, 64, 68, or 69 in order to make such frequencies available for public safety purposes pursuant to the provisions of section 337 of the Communications Act of 1934 (47 U.S.C. 337).

**APPENDIX B – MAPS SHOWING LOCATIONS OF EXISTING ANALOG TV AND AUTHORIZED DTV STATIONS**

The following attachments map the contours of incumbent analog TV (NTSC) and DTV stations. Each set of maps begins with a map showing the locations of all of the stations on Channels 52-69 aggregated on a nationwide basis. The initial map is then followed by nationwide maps showing the locations of stations on a channel-by-channel basis, beginning with Channel 52 and progressing to Channel 69.

The NTSC maps show the current Grade B contour of each station. *See* 47 C.F.R. § 73.683(a) (definition of Grade B field strength contour). The DTV maps depict the service area for each facility, using a noise-limited contour of 41 dBu. *See* 47 C.F.R. § 73.622(e).

Readers should be aware that these maps do not depict the actual amount of currently usable “white space” in the Upper and Lower 700 MHz bands because interference protection requirements require wireless facilities to be situated well outside a TV or DTV station’s contour. Also, those interference protection requirements generally require that new public safety and commercial wireless licensees protect TV/DTV incumbents that may exist both on the same channel (co-channel) or adjacent channels throughout the DTV transition period. *See* 47 C.F.R. §§ 27.60, 90.545(c) (TV/DTV interference protection requirements). For example, a wireless entity seeking to operate on Channel 65 would be required to engineer its facilities to protect TV and DTV stations on Channel 64, 65, and 66. An area that appears “white” on a channel 65 map might not be available if a TV or DTV station is located in a nearby area on channel 64 or channel 66. Similarly, an area that appears “white” on the TV station channel 65 map would not be available if it is located near a DTV station on channel 65. Moreover, as is explained in the preceding report, the Commission is currently considering a number of other issues concerning the protection that must be provided to incumbent analog and digital broadcasters in the 700 MHz band during the transition. *See* Second Periodic Review of the Commission’s Rules and Policies Affecting the Transition to Digital Television, *Notice of Proposed Rulemaking*, 18 FCC Rcd 1279, 1292-1300 ¶¶ 39-60 (2003).